EMPLOYMENT STANDARDS TRIBUNAL

In the matter of an appeal pursuant to Section 112 of the

Employment Standards Act R.S.B.C. 1996, C.113

- by -

Rejean Poulin operating as Mountain Pets & Leisure
(“ Poulin ”)

- of a Determination issued by -

The Director of Employment Standards
(the "Director")

ADJUDICATOR: David B. Stevenson

FILE No.: 2000/208

DATE OF HEARING: July 28, 2000

DATE OF DECISION: August 18, 2000

DECISION

APPEARANCES:

for the Appellant	Rejean Poulin
for the individual	in person

OVERVIEW

This is an appeal pursuant to Section 112 of the *Employment Standards Act* (the "*Act*") by Rejean Poulin operating as Mountain Pets & Leisure ("Poulin") of a Determination which was issued on March 1, 2000 by a delegate of the Director of Employment Standards (the "Director"). The Determination concluded that Poulin had contravened Part 3, Section 18(2) and Section 21(1) and Part 7, Section 57 of the *Act* in respect of the employment of Gordon Williamson ("Williamson") and ordered Poulin to cease contravening and to comply with the *Act* and to pay an amount of $1784.47.

Poulin says, in effect, the conclusion in the Determination that Williamson was an employee of Mountain Pets & Leisure was wrong. He says Williamson was a "joint venturer" with Poulin in the business of Mountain Pets & Leisure and he seeks to have the Determination cancelled for that reason.

ISSUES TO BE DECIDED

While the appeal raises several matters of concern with the Determination, the only legitimate issue is whether Determination was correct in its conclusion that Williamson was an employee for the purposes of the *Act* in respect of his work at Mountain Pets & Leisure.

FACTS

The Determination comprehensively canvassed the allegations of fact made by and the positions of the respective parties and I need not reiterate all of that material in this appeal decision. There were only a few additional facts added to the material at the appeal hearing. The Determination set out the following under the heading Findings of Fact:

> I prefer to believe on the balance of probabilities that the claimant was an employee working in the position of Store Manager. This belief is reinforced by the fourfold test results and Revenue Canada's findings. There is no evidence of a contractual relationship between Gordon Williamson and Rejean Poulin. There is no record of Gordon Williamson ever billing Rejean Poulin from 1997 through May of 1999, through accounts receivable for services rendered. Rather, there is evidence that Rejean Poulin recorded monies paid to Gordon Williamson as **wages** under **Employee's Advances** in the Employer's Pay Records. There is no

> paper trail to suggest that a partnership or Joint Venture agreement was entered into by both parties in 1997. In addition, there is no evidence of a joint profit sharing scheme outlining either parties' share of realized profit.
>
> Rejean Poulin provided the monies, the control, ownership of tools and equipment, and would have been the only one to profit or risk a loss in this business. The only loss risk to the claimant was the loss of his position as Store Manager and embarrassment as a result of that loss in the face of the Pet industry contacts that the claimant has.

Evidence presented at the hearing added the following details:

1. While Williamson had signing authority on the pet store account, that authority was not given until he had been working at the store for approximately a year. When Williamson left the store at the end of May, 1999, Poulin was able, unilaterally, to have his signing authority revoked.

2. The business of Mountain Pets & Leisure was sold effective April 1, 2000. No accounting of that sale was ever provided to Williamson by Poulin.

3. While Williamson had access to the profit and loss statements of Mountain Pets & Leisure, he was never provided with a copy of the financial statements of the business and was uninvolved in many significant financial arrangements of the business.

ANALYSIS

The burden of demonstrating the Determination is wrong in some material way is on Poulin. He has not met that burden. Keeping in mind that the *Act* is remedial legislation and should be given such large and liberal interpretation as will best ensure the attainment of its purposes and objects, the conclusion that Williamson was an employee is not only consistent with the facts, it is also consistent with the *Act's* objectives and purposes. It is apparent from the material and the evidence produced at the hearing that Poulin controlled the business. From the perspective of the *Act*, Williamson did little more than perform work for Poulin at Mountain Pets & Leisure in the capacity of Store Manager. There is absolutely no evidence there was any partnership between Williamson and Poulin. There are too many aspects of the alleged joint venture agreement that are not consistent with normal and reasonable business practices relating to such an arrangement.

But even if there was in a "business arrangement", as Poulin says, it is undisputable that Williamson's main contribution to such arrangement was to perform work normally performed by an employee. In those circumstances, and regardless of the business relationship between the two persons, Williamson still fits comfortably within the definition of "employee", which includes:

> *(b) a person an employer allows, directly or indirectly, to perform work normally performed by an employee,*

The *Act* does not preclude a person who is involved in a "business arrangement" from being an employee for the purposes of the *Act*. In *Barry McPhee*, BC EST #D183/97, the Tribunal stated:

> The definition of "employee" is also stated in broad terms and indicates an intention by the legislature to cast the statutory net of the Act as far as the its purposes, governed by some rational limitations, will justify. We note in this context a key purpose of the Act is to ensure the basic standards of compensation and conditions of employment are received by employees.

In other words, the very fact of performing the work raises a presumption that a person is an employee for the purposes of the *Act* and would be entitled to be paid for that work. The terms and conditions which would apply to that work, in the absence of evidence of some other arrangement, would be the minimum standards set out in the *Act*.

As well, it was noted by the Court in *Machtinger v. HOJ Industries Ltd.* (1992) 91 D.L.R. (4th) 491 (S.C.C.):

> . . . an interpretation of the Act which encourages employers to comply with the minimum requirements of the Act, and so extends its protection to as many employees as possible is favoured over one that does not.

As a result, even if there were some kind of business arrangement, there is no apparent reason, in the circumstances, for concluding that Williamson should not be treated as an employee for the purposes of the *Act*.

The appeal is dismissed.

ORDER

Pursuant to Section 115 of the *Act*, I order the Determination dated March 1, 2000 be confirmed in the amount of $1784.47, together with any interest that has accrued pursuant to Section 88 of the *Act*.

David B. Stevenson
Adjudicator
Employment Standards Tribunal